

AUG 3 - 2006

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:)	Chapter 7
)	
SETH LEE SERAPH AKA)	
SCOTT LEE SHIRE,)	Case No. 4-06-00383-EWH
)	
Debtor.)	
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SETH LEE SERAPH AKA)	
SCOTT LEE SHIRE,)	Adv. No. 4-06-00063-EWH
)	
Plaintiff,)	
)	
v.)	MEMORANDUM DECISION ON DEBTOR'S
)	MOTION FOR APPOINTMENT OF COUNSEL
)	
UNITED STATES DEPARTMENT)	
OF EDUCATION,)	
)	
Defendant.)	
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INTRODUCTION

The Debtor requests an appointment of counsel to represent him in his bankruptcy case and adversary proceeding seeking a hardship discharge of his student loans. This court is not a "court of the United States" within the context of § 451 or § 1915 and lacks the authority to appoint an indigent Debtor counsel.¹ Even if the court had such authority, appointing counsel is a

¹ Absent contrary indication, section references are to the United States Code, 28 U.S.C.

1 discretionary decision, and there is no pool of available bankruptcy
2 attorneys for pro bono work. Accordingly, the Debtor's request is
3 denied.

4 5 FACTS & PROCEDURAL HISTORY

6 Debtor is incarcerated in the Arizona State Prison
7 Complex in Florence, Arizona. He filed his Chapter 7 voluntary
8 petition for bankruptcy on April 14, 2006. The Debtor then filed an
9 adversary proceeding to discharge his student loan debt of
10 \$10,178.00, alleging undue hardship. On July 17, 2006 the Debtor
11 filed a motion for appointment of counsel.

12 13 DISCUSSION

14 A. A bankruptcy court is not a "court of the United States"

15 The Debtor requests appointment of counsel to represent him,
16 pro bono, in his bankruptcy case pursuant to § 1915(e)(1), which
17 states that "[t]he court may request an attorney to represent any
18 person unable to afford counsel." The term "the court" refers to
19 "any court of the United States." See § 1915(a)(1). Section 451 is
20 the applicable definitional section. Bankruptcy courts are not
21 explicitly listed as "court[s] of the United States" in § 451.

22 In Perroton v. Gray (In re Perroton), 958 F.2d 889 (9th Cir.
23 1992) the court examined the legislative history of § 451, and
24 found that Congress had added bankruptcy courts to the definition in
25 1978 only to remove them by amendment before the addition took
26 effect. Id. The Perroton court, therefore, found no jurisdiction for

1 a bankruptcy court in § 1915. Id at 895. Perroton is consistent
2 with decisions in other jurisdictions. See In re Lamb, 206 B.R.
3 527, 529 (Bankr. E.D. Mo. 1997) (court declined to invoke
4 section 1915(e)(1) (formerly section 1915(d)); In re Ennis, 178 B.R.
5 192 (Bankr. W.D.Mo. 1995) (denied motion to proceed in forma pauperis
6 under 28 U.S.C.A. 1915(a)); Elliot v. May, 122 Fed. Appx. 944, 946
7 (10th Cir. 2004) (holding that in forma pauperis petitions are not
8 available in bankruptcy proceedings). This court is bound by the
9 holding of Perroton. Bankruptcy courts are not "courts of the
10 United States" for purposes of § 1915. Therefore, this court has no
11 authority to provide the Debtor the attorney he requests.

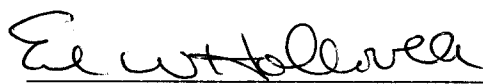
12 B. Section 1915 does not compel appointment of an attorney

13 Section 1915(e)(1) states that "[t]he court may request an
14 to represent any person unable to afford counsel." This is an
15 entirely discretionary decision for the court. Even if the court did
16 have jurisdiction under § 1915, there is no pool of bankruptcy
17 attorneys available to provide pro bono work.

18
19 CONCLUSION

20
21 A separate order denying the relief requested will be entered
22 this date.

23 Dated this 3rd day of August, 2006.

24
25 

26 Eileen W. Hollowell
United States Bankruptcy Judge

1 Copies of the foregoing mailed
2 this 3rd day of August, 2006 to:

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